IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 6069-CAT of 2005

Date of Decision : 18.12.2006

Bhagwan Dass Singal ... Petitioner

Versus

Union of India and others. .. Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR,
HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Akshay Bhan, Advocate,
for the petitioner.

Mr. Ashwani Kumar Bansal,
Senior Counsel Central Government,
for respondent Nos. 1 to 5.

J.S. Khehar, J. (Oral)

The petitioner entered into the employment of the respondents as Sectional Officer (Civil) on 15.03.1961. By an order dated 01.07.1964 on having completed three years of service, he was declared quasi permanent. While in the service of the respondents, the petitioner tendered his resignation through a communication dated 01.02.1973. Relevant extract of the resignation letter of the petitioner is being extracted hereunder:-

> "Respectfully, I am to state that my wife is suffering from psychological & Nurosis since long & still she is not in here good health & she require proper care. My family circumstances are such that except myself nobody is able to look after her in my family. Moreover, my father is quite old & is suffering from joint's trouble seriously. I am on long leave since Oct. 72 & it is not possible for me to join my duties.

As such, I hereby submit my resignation from my present duties due to my family circumstances. It is therefore requested that my resignation may kindly be accepted early.

It is also requested that condition of one month's notice may kindly be waived off in view of my family circumstances. I shall be highly thankful for this act of kindness."

Through a memorandum dated 18.08.1973, the resignation of the petitioner was accepted. Relevant extract of the aforesaid memorandum is also being reproduced hereunder:-

"The resignation tendered by Shri B.D. Singhal, Junior Engineer attached to Food Storage Division, CPWD, Patiala, of his own volition is hereby accepted with immediate effect.

Shri B.D. Singhal, Junior Engineer will be considered as having severed all his connections with this Department from the date of issue of this letter."

Having tendered his resignation in 1973, the petitioner commenced to raise a claim for pension. His claim was not accepted. He approached the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the "Administrative Tribunal") by filing Original Application No. 1246/HR/2003 for the first time, wherein he raised a claim for pension. The aforesaid Original Application was disposed of by the Administrative Tribunal on 26.12.2003, by requiring the petitioner to first approach the Department with all necessary and supporting documents. Order passed by the Administrative Tribunal also clarified that if the petitioner submitted such a representation within one month from the disposal of the aforesaid Original Application No. 1246/HR/2003, a decision

would be taken thereon by the competent authority within three months from the date of receipt of such representation. Since, the representation filed by the petitioner on 08.01.2004 (Annexure A-5) was rejected by an Office Memorandum dated 24.04.2004 (Annexure A-1/a), the petitioner approached the Administrative Tribunal for the second time by filing Original Application No. 530/HR/2004. The Administrative Tribunal by its order dated 23.11.2004, rejected the claim of the petitioner. Through the instant writ petition, the petitioner has impugned the Memorandum dated 24.04.2004 (referred to hereinabove) and the order passed by the Administrative Tribunal dated 23.11.2004 vide which Original Application No. 530/HR/2004 was dismissed.

It is not a matter of dispute that the provisions of Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the "1972 Rules"), will govern the controversy raised by the petitioner in order to press his claim for the release of pension. The petitioner has placed reliance on Rule 5 of the aforesaid Rules. The same is being extracted hereunder:-

> "5. Regulation of claims to pension or family pension.
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> (1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is discharged or is allowed to resign from service or dies, as the case may be.
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> (2) The day on which a Government servant retires or is retired or is discharges or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day.
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> "Provided that in the case of a Government servant who is

retired prematurely or who retires voluntarily under Clause (j) to (m) or rule 56 of the Fundamental Rules or rule 48, as the case may be, the date of retirement shall be treated as a non-working day."

In order to oppose the claim of the petitioner, learned counsel for the respondents has invited our attention to Rule 26 of the 1972 Rules, which is also being extracted hereunder:-

"26. Forfeiture of service on resignation. (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government Servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdrawn his resignation in the public interest on the following conditions, namely:

(i) that the resignation was tendered by the

Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation.

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper.

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than 90 days.

(iv) that the past, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available;

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority

> allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

The only question to be adjudicated upon is whether the claim of the petitioner has to be decided in terms of Rule 5 of the 1972 Rules, or, Rule 26 of the said Rules.

It needs to be noticed that while rejecting the claim of the petitioner, the Administrative Tribunal placed reliance on a decision rendered by the Apex Court in Reserve Bank of India and another versus Cecil Dennis Solomon and another, J.T. 2003 (10) S.C. 156. It was concluded by the Apex Court in the afore-stated judgment that on resignation of an employee from service, the concerned employee forfeits the entire past service. It is, therefore, that the learned counsel for the respondents had placed reliance on Rule 26 of the 1972 Rules which clearly envisages that resignation from service or a post would entail forfeiture of past service. It would also be essential to extract herein regulation 18 of the Reserve Bank of India Staff Regulations, 1948, which came to be interpreted by the Apex Court in Reserve Bank of India's case (supra):-

> "18. Forfeiture of service on resignation or dismissal or termination: Resignation or dismissal or termination of an employee from the service shall entail forfeiture of his entire past service and consequently shall not qualify for pension payment."

In order to repudiate the conclusion drawn by the Administrative Tribunal, as well as, the submissions of the learned counsel

for the respondents, learned counsel for the petitioner has sought to distinguish regulation 18 of the Reserve Bank of India Staff Regulations, 1948, from rule 26 of the 1972 Rules relied upon by the respondents. In this behalf, it is pointed out, that the regulation which came up for interpretation at the hands of the Apex Court in Reserve Bank of India's case (supra) specifically, contained a mandate that resignation of an employee from service shall entail forfeiture of his entire service and specifically that past service, "… shall not qualify for pension payment...". It is pointed out by the learned counsel for the petitioner that there is no such or similar mandate in rule 26 of the 1972 Rules. In fact, it is the vehement contention of the learned counsel for the petitioner that rule 5 of the 1972 Rules expressly provides for the payment of pension to a Government servant, who is allowed to resign from service. The question, therefore, to be determined is, whether the petitioner was allowed to resign from service. We have extracted herein above the resignation letter submitted by the petitioner, as well as, an extract of the memorandum dated 18.08.1973, vide which the same was accepted. On a perusal of the aforesaid, we are satisfied that the petitioner was allowed to resign from service. Having arrived at the aforesaid conclusion, we are also of the view that the parameters specified in rule 5 of the 1972 Rules are completely met, in the facts and circumstances of the present case. Accordingly, we are of the view that the petitioner is entitled to pension under rule 5 of the 1972 Rules and that rule 26 of the 1972 Rules, which is a general applicability is irrelevant for the issue in hand, as rule 5 of the 1972 Rules is a specific Rule on the payment of pension to a variety of employees placed in different circumstances, including those who have been allowed to resign. Our view finds support

from a decision rendered by the Supreme Court in Union of India versus Rakesh Kumar, AIR 2001, S.C., 1877, wherein the Apex Court observed as under:-

> "Reading the aforesaid G.O. as a whole, it nowhere reveals Government's intention to confer any additional pensionary benefits to the members of the BSF who retired before completing the requisite qualifying service as provided under the CCS (Pension) Rules. It neither supplements nor substitutes the statutory rules. The G.O. read with Rule 19 of the BSF Rules would only mean that in case of resignation and its acceptance by the competent authorities, the member of the BSF would be entitled to get pensionary benefits if he is otherwise eligible for getting the same under the CCS (Pension) Rules and to that extent Rule 26 which provides for forfeiture of service on resignation would not be applicable.

It is apparent from the decision rendered by the Apex Court in Reserve Bank of India's case (supra), that it has now been declared by the Apex Court that if there is a specific provision on the issue of admissibility of pension to an employee, who has severed his ties from his employment by tendering a resignation; either under a statutory rule, or under policy instructions issued by the Government, he would be entitled to the same and not otherwise.

In view of our finding that there is a specific rule envisages pension even on resignation, namely, rule 5 of the 1972 Rules, we are of the view that the petitioner would be entitled to pension thereunder.

It would be pertinent to mention that learned counsel for the respondents emphatically opposed the claim of the petitioner, for payment of

the entire arrears of pension with effect from the date of acceptance of his resignation on 18.08.1973, by asserting that although the petitioner had tendered his resignation in the year 1973, he raised the claim therefor, by approaching the Administrative Tribunal by filing Original Application No. 530/HR/2004 for the first time in the year 2004, i.e., after a lapse of almost 31 years. It is, therefore, the vehement contention of the learned counsel for the respondents that the petitioner's claim cannot be accepted in law at such a belated stage.

We have considered the aforesaid submission of the learned counsel for the respondents. We are also mindful of Section 21 of the Administrative Tribunals Act, 1985, wherein, on the filing of the representation before the competent authority, the period of limitation to approach the Administrative Tribunal has been specified as 18 months from the date of the filing of the representation, and within one year in case a final order is passed by the competent authority. Section 21 of the Administrative Tribunals Act, 1985 is being extracted hereunder:-

> "21. Limitation – (1) A Tribunal shall not admit an application, -
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> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
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> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made,

within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

Having examined the issue in its totality, we are of the view that a fresh cause of action accrued to the petitioner, for claiming pension at the

end of every month, when he became entitled for such payment. It is apparent from the pleadings of the instant writ petition, that the petitioner approached the Administrative Tribunal for the first time in December 2003 by filing Original Application No. 1426/HR/2003, which was disposed of on 26.12.2003, with liberty to the petitioner to move a representation within a period of one month, from the date of the issue of the order, by the Administrative Tribunal, with a mandate to the respondents to decide the same within a period of three months, from the date of the receipt of such representation. It is, therefore, apparent that the petitioner approached before the Administrative Tribunal for the first time for pensionary benefits in December 2003. Despite a second attempt before the Administrative Tribunal, he again failed to obtain a favourable order. Having decided the claim of the petitioner on merits, and having arrived at the conclusion that he was entitled to pension under rule 5 of the 1972 Rules, we are satisfied that the petitioner should be paid arrears of pension, for a period of 18 months before dismissal of the first Original Application No. 1246/HR/2003, filed by him before the Administrative Tribunal i.e. for a period of 18 months before 26.12.2003. Ordered accordingly.

(J.S. Khehar)
Judge

December 18, 2006
vkd

(S.D. Anand)
Judge